

# HOUSE BILL No. 6419

September 24, 2002, Introduced by Reps. Kowall, Raczkowski, Hager, Woronchak, Gilbert, Richardville, Hale, Vear, Daniels, DeRossett, McConico, Thomas, Lemmons and Allen and referred to the Committee on Commerce.

A bill to amend 1978 PA 639, entitled "Hertel-Law-T. Stopczynski port authority act," by amending sections 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 16, 23, and 24 (MCL 120.101, 120.102, 120.103, 120.104, 120.106, 120.108, 120.109, 120.110, 120.111, 120.112, 120.113, 120.116, 120.123, and 120.124), section 23 as amended by 1984 PA 256; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 ~~"Hertel-Law-T. Stopczynski"~~ "KOWALL port authority act".

3           Sec. 2. As used in this act:

4           (a) "Authority" means a port authority created under this  
5 act and may also include the area within the jurisdiction of an  
6 authority.

1 (b) "Constituent unit" means a city or county requesting the  
2 incorporation of an authority.

3 (c) "Governing body of the city" means the city council or  
4 city commission of a city requesting incorporation of an author-  
5 ity created under this act.

6 (d) "Governing body of the county" means the county board of  
7 commissioners of a county participating in an authority created  
8 under this act.

9 (e) "Port facilities" means ~~those~~ facilities ~~owned by the~~  
10 ~~port authority~~ such as: seawall jetties; piers; wharves; docks;  
11 boat landings; marinas; AERONAUTICAL FACILITIES; MARKETS; ware-  
12 houses; storehouses; elevators; grain bins; cold storage plants;  
13 terminal icing plants; bunkers; oil tanks; ferries; canals;  
14 locks; bridges; RAILROAD CONNECTIONS; SIDETRACKS; SIDINGS; tun-  
15 nels; seaways; conveyors; modern appliances for the economical  
16 handling, storage, and transportation of freight and handling of  
17 passenger traffic; transfer and terminal facilities; ~~required~~  
18 USEFUL for the efficient operation and development of ports and  
19 harbors; other harbor improvements; ~~or~~ improvements, enlarge-  
20 ments, remodeling, or extensions of any of these buildings or  
21 structures; OR ANY OTHER PROPERTY OR FACILITIES NECESSARY OR  
22 USEFUL IN CONNECTION WITH THE BUILDINGS OR STRUCTURES LISTED IN  
23 THIS SUBDIVISION OR ECONOMIC DEVELOPMENT PROJECTS UNDERTAKEN BY  
24 THE AUTHORITY THAT ARE UPON, IN, OVER, UNDER, ADJACENT TO, OR  
25 NEAR TO NAVIGABLE WATERS OR WITHIN THE BOUNDARIES OF THE AUTHOR-  
26 ITY AND THAT ARE NECESSARY OR USEFUL FOR THE FURTHERANCE OF  
27 WATER, AIR, OR LAND COMMERCE.

1 (f) "Project" means the acquisition, purchase, construction,  
2 reconstruction, rehabilitation, remodeling, improvement, enlarge-  
3 ment, repair, condemnation, maintenance, or operation of port  
4 facilities.

5 Sec. 3. ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN  
6 authority may exercise and apply any or all of its powers and  
7 duties, as prescribed and set forth in this act, within the  
8 respective boundaries of the county or counties creating a port  
9 authority under this act, including jurisdiction over commer-  
10 cially navigable water lying ~~therein~~ WITHIN THOSE BOUNDARIES.

11 Sec. 4. (1) A city, ~~and~~ A county, a combination of  
12 counties, or a combination consisting of at least 1 city and 1  
13 county, BY RESOLUTION OF THE GOVERNING BODY OR by joint resolu-  
14 tion of their respective governing bodies, may request the gover-  
15 nor to authorize the incorporation of an authority. The governor  
16 shall consider the recommendations of the ~~department of~~ state  
17 ~~highways and~~ transportation DEPARTMENT and the department of  
18 ~~commerce~~ CONSUMER AND INDUSTRY SERVICES in authorizing the  
19 authority. The initial articles of incorporation shall be  
20 approved by the governor and may ~~thereafter~~ THEN be amended by  
21 resolution of the authority, subject to approval by the  
22 governor. After approval by the governor, the articles of incor-  
23 poration and any amendments to those articles shall be effective  
24 upon filing with the secretary of state.

25 (2) An authority created under this act shall be a body cor-  
26 porate and politic. NOT MORE THAN 1 AUTHORITY SHALL BE CREATED

1 WITHIN THE BOUNDARIES OF A CITY, COUNTY, COMBINATION OF COUNTIES,  
2 OR COMBINATION OF AT LEAST 1 CITY AND 1 COUNTY.

3 (3) The exercise by an authority of the powers conferred by  
4 this act shall be considered and held to be an essential govern-  
5 mental function and a benefit to, and a legitimate public purpose  
6 of, the state, the authority, and the constituent units.

7 Sec. 6. Before the issuance of any bonds, notes, or other  
8 evidences of indebtedness under this act, the secretary-treasurer  
9 of an authority shall execute a bond in the penal sum of  
10 \$100,000.00, conditioned upon the faithful performance of the  
11 duties of the office and executed by a surety company authorized  
12 to transact business in this state as surety, UNLESS THIS  
13 REQUIREMENT IS WAIVED BY A RESOLUTION ADOPTED BY THE MEMBERS OF  
14 THE AUTHORITY. The bond shall be filed in the office of the sec-  
15 retary of state. The premium of the bond shall be a current  
16 expense of the authority.

17 Sec. 8. An authority may DO 1 OR MORE OF THE FOLLOWING:

18 (a) Adopt, amend, and repeal bylaws for the regulation of  
19 its affairs and the conduct of its business.

20 (b) Sue and be sued on the same basis as the state; ~~and~~  
21 adopt and register with the secretary of state an official seal  
22 and alter that seal at its pleasure; AND CREATE OR PARTICIPATE IN  
23 ENTITIES OR INSTRUMENTALITIES CREATED TO EFFECTUATE THE PURPOSES  
24 OF THE AUTHORITY AND THIS ACT.

25 (c) Maintain offices at a place or places, either within or  
26 ~~without~~ OUTSIDE OF its jurisdiction as ~~it~~ THE AUTHORITY may  
27 determine.

1 (d) Acquire, OWN, construct, reconstruct, rehabilitate,  
2 improve, maintain, lease as lessor or as lessee, repair, or  
3 operate, OR ANY COMBINATION OF THESE, port facilities within its  
4 territorial jurisdiction AND AN ADJACENT TERRITORIAL JURISDICTION  
5 OR JURISDICTIONS IN CONCERT WITH THE GOVERNING BODY OF THAT  
6 JURISDICTION OR JURISDICTIONS PURSUANT TO THE URBAN COOPERATION  
7 ACT OF 1967, 1967 (EX SESS) PA 7, MCL 124.501 TO 124.512, includ-  
8 ing the dredging of ship channels and turning basins and the  
9 filling and grading of land ~~therefor~~ FOR THESE PURPOSES. An  
10 authority may operate a leased facility, owned by the authority,  
11 if the lessee defaults and a new lease is negotiated or competi-  
12 tively bid.

13 (e) Designate the location and character of the port facili-  
14 ties ~~which~~ THAT the authority may hold, CONTROL, or own or over  
15 which it is authorized to act and regulate all matters related to  
16 the location and character of those port facilities.

17 (f) Acquire, hold, and dispose of real and personal property  
18 WITHIN OR OUTSIDE OF THE AUTHORITY'S TERRITORIAL JURISDICTION.

19 (g) Make directly, or through the hiring of expert consul-  
20 tants, investigations and surveys of whatever nature, including  
21 studies of business conditions, freight rates, port services,  
22 physical surveys of the conditions of channels and structures,  
23 and the necessity for additional port facilities for the develop-  
24 ment and improvement of commerce and recreation and for the more  
25 expeditious handling of that commerce and recreation, and make  
26 studies, surveys, and estimates, as necessary for the execution  
27 of its powers under this act.

1 (h) Promulgate all necessary rules to fulfill the purposes  
2 of this act.

3 (i) Issue its bonds, notes, or other evidences of indebted-  
4 ness as provided in this act.

5 (j) ~~Fix~~ ESTABLISH and revise from time to time and charge  
6 and collect rates, fees, rentals, or other charges for the use of  
7 ~~a~~ ANY PORT facility ~~owned by~~ THAT the authority OWNS, LEASES,  
8 IS AUTHORIZED TO ACQUIRE, OR IN WHICH THE AUTHORITY HAS AN  
9 INTEREST.

10 (K) MAKE LOANS AND EXTEND CREDIT IN THE AMOUNTS AND ON THE  
11 TERMS THE AUTHORITY DETERMINES.

12 (l) APPLY FOR, RECEIVE, AND MAINTAIN GRANTS OF AUTHORITY  
13 FROM THE UNITED STATES FOREIGN TRADE ZONE BOARD UNDER CHAPTER  
14 590, 48 STAT. 998, 19 U.S.C. 81a TO 81u, OR ANY SUCCESSOR ACT.

15 Sec. 9. An authority may DO 1 OR MORE OF THE FOLLOWING:

16 (a) Appear in its own behalf before boards, commissions,  
17 departments, or other agencies of the federal government, ~~or~~ of  
18 any state, or OF CANADA OR ANY OF ITS PROVINCES, BEFORE interna-  
19 tional conferences, and before committees of the congress of the  
20 United States, ~~and~~ the state legislature, THE PARLIAMENT OF  
21 CANADA, AND THE LEGISLATURE OF ANY PROVINCE OF CANADA in all mat-  
22 ters relating to the design, establishment, construction, exten-  
23 sion, operation, improvement, repair, or maintenance of a project  
24 OWNED, IMPROVED, CONTROLLED, operated, ~~and~~ OR maintained by the  
25 authority under this act, and appear before any federal or state  
26 agencies OR AGENCIES OF CANADA OR ANY OF ITS PROVINCES in matters  
27 relating to transportation rates, port services and charges,

1 demurrage, switching, wharfage, towage, pilotage, differentials,  
2 discriminations, labor relations, trade practices, river and  
3 harbor improvements, aids to navigation, permits for structures  
4 in navigable waters, THE EXERCISE OF ANY POWER GRANTED TO AN  
5 AUTHORITY UNDER THIS ACT, and all other matters affecting the  
6 physical development of, and the business interest of, the  
7 authority and those it serves.

8 (b) ~~Make application~~ APPLY for, receive, and accept from  
9 any federal, state, or municipal agency, foundation, public or  
10 private agency, or individual, a grant or loan for, or in aid of,  
11 the planning, construction, operation, or financing of a port  
12 facility; and receive and accept contributions from any source of  
13 money, property, labor, or other things of value, to be held,  
14 used, and applied for the purposes for which the grant or contri-  
15 bution may be made.

16 (c) Appoint an executive director who shall be the chief  
17 administrative officer of the authority, and to whom the author-  
18 ity may delegate any of its administrative powers and  
19 authorizations. During employment the executive director shall  
20 not have a financial interest in port facilities or projects over  
21 which the authority has jurisdiction or power or authorization to  
22 act.

23 (d) Employ personnel as is necessary and employ the services  
24 of private consultants and engineers, legal counsel, accountants,  
25 construction and financial experts, and other agents for render-  
26 ing professional and technical assistance and advice as may be

1 necessary, and whose compensation, including the executive  
2 director, shall be determined by the authority.

3 Sec. 10. An authority may DO 1 OR MORE OF THE FOLLOWING:

4 (a) Subject to the authority of the federal government and  
5 the state and with the agreement of the constituent units, pro-  
6 vide for the preservation of navigation AND AERONAUTICAL  
7 FACILITIES within its territorial jurisdiction, including the  
8 establishment by regulation of lines beyond which piers, bulk-  
9 heads, wharves, pilings, structures, obstructions, or extensions  
10 of any character may not be built, erected, constructed, or  
11 extended; provide by regulation for the stationing, anchoring,  
12 and movement of vessels or other watercraft; adopt rules to pre-  
13 vent material, refuse, or matter of any kind from being thrown  
14 into, deposited, or placed where it may fall, or be washed, into  
15 navigable waters under its jurisdiction; ascertain the depth and  
16 course of the channels of those navigable waters; erect and main-  
17 tain, authorize the erection and maintenance of, and make rules  
18 respecting wharves, bulkheads, piers, and ~~piling~~ PILINGS, and  
19 the keeping of ~~the same~~ THOSE in repair ~~—~~ to prevent injury  
20 to navigation or health; regulate the use of wharves, docks,  
21 piers, bulkheads, or pilings ~~owned~~ CONTROLLED by it OR IN WHICH  
22 IT HAS AN INTEREST; lease or rent the same, and impose and col-  
23 lect dockage from vessels and watercraft lying at, or using the  
24 same; and collect wharfage and other charges upon goods, wares,  
25 merchandise, or other articles landed at, shipped from, stored  
26 on, or passed over the same.



1 (b) Make and enter into contracts and agreements necessary  
2 or incidental to the performance of its duties and the execution  
3 of its powers under this act.

4 (c) Lay out, construct, acquire, operate, lease, sell, and  
5 convey planned industrial districts as a part of port facilities  
6 within its jurisdiction, subject to the restrictions contained in  
7 this act upon operation and ownership of port facilities.

8 (d) Do all acts and things necessary or convenient to pro-  
9 mote and increase commerce and recreation within its territorial  
10 jurisdiction and carry out the powers expressly granted and any  
11 powers implied or necessary for the exercise of the powers  
12 expressly granted in this act.

13 Sec. 11. Except with respect to docks or wharves owned,  
14 IMPROVED, controlled, ~~or~~ operated, OR MAINTAINED by ~~,~~ the  
15 authority, this act shall not be construed to impose a duty upon  
16 an authority to a person using its waters in regard to the safety  
17 thereof, or to render an authority liable for loss of life or  
18 injury or damage to person or property ~~,~~ by reason of an  
19 obstruction in, or unsafe condition of, any part of its waters,  
20 nor shall this act be construed to render the authority liable in  
21 damages or otherwise for an omission to pass or enforce a rule or  
22 resolution made under this act.

23 Sec. 12. (1) An authority may acquire by purchase or lease,  
24 when it considers the purchase or lease expedient, lands, struc-  
25 tures, property, rights, rights of way, franchises, easements,  
26 and other interests in lands OR AIR SPACE RIGHTS as it considers  
27 necessary or convenient for the construction or operation of a

1 project ~~—~~ upon terms and at a price as considered reasonable  
2 and agreed upon between the authority and the owner thereof.

3 (2) An authority may acquire by condemnation lands, property  
4 rights, rights of way, franchises, easements, and other property,  
5 or parts thereof or rights therein, of a person, partnership,  
6 association, or corporation considered by the authority to be  
7 necessary for the construction or efficient operation of a  
8 project. However, a facility currently operated as a port facil-  
9 ity by a terminal operator or a facility owned or operated by and  
10 for the exclusive use of the owner or operator and a facility  
11 owned or operated by a common carrier or public utility shall be  
12 exempt from this subsection. The condemnation shall be made in  
13 the manner provided by ~~Act No. 295 of the Public Acts of 1966,~~  
14 ~~as amended, being sections 213.361 to 213.391 of the Michigan~~  
15 ~~Compiled Laws~~ 1966 PA 295, MCL 213.361 TO 213.391, OR THE UNI-  
16 FORM CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO  
17 213.75, except where that procedure may be inconsistent with this  
18 act.

19 (3) An authority may sell or remove the buildings or other  
20 structures upon lands taken by the authority, and may sell or  
21 lease lands or rights or interest in lands or other property  
22 taken or purchased for the purposes of this act.

23 Sec. 13. (1) An authority and 1 or more constituent units  
24 may enter into a contract or contracts for the acquisition,  
25 improvement, enlargement, or extension of port facilities and for  
26 the payment of the cost ~~thereof~~ OF THOSE PORT FACILITIES by the

1 contracting constituent units, with interest, over a period of  
2 not more than 40 years.

3 (2) Each contracting constituent unit shall pledge its full  
4 faith and credit for the payment of its obligations under the  
5 contract IF APPROVED BY A MAJORITY OF THE ELECTORS VOTING ON THE  
6 QUESTION IN THE CONTRACTING CONSTITUENT UNIT. If the constituent  
7 unit has taxing power, each year it shall levy ~~a~~ THE APPROVED  
8 tax upon all real and personal property within the constituent  
9 unit, which may be imposed without limitation as to rate or  
10 amount, to the extent necessary for the prompt payment of that  
11 part of the contract obligations ~~as shall~~ THAT fall due before  
12 the following year's tax collection. The tax shall be in addi-  
13 tion to any tax ~~which~~ THAT the contracting constituent unit may  
14 otherwise be authorized to levy and may be imposed without limi-  
15 tation as to rate or amount, but shall not be in excess of the  
16 rate or amount necessary to pay the contract obligation. If any  
17 contracting constituent unit at the time of its annual tax levy  
18 has on hand in cash any amount pledged to the payment of the cur-  
19 rent obligations for which the tax levy is to be made, ~~then~~ the  
20 annual tax levy may be reduced by that amount. ~~For the purpose~~  
21 ~~of obtaining the credit, funds~~

22 (3) FUNDS may be raised by a contracting constituent unit in  
23 1 or more of the following methods:

24 (a) By service charge to users of the facilities owned,  
25 IMPROVED, CONTROLLED, OPERATED, OR MAINTAINED by the port  
26 authority.

1 (b) By setting aside state collected funds disbursed to the  
2 contracting constituent unit.

3 (c) By special assessment upon lands benefited.

4 (d) By setting aside any other available money.

5 (4) ~~-(3)-~~ A contracting constituent unit may agree to raise  
6 all or any part of its contract obligation by 1 or more of the  
7 methods enumerated in subsection ~~-(2)-~~ ~~which~~ (3) THAT may be  
8 available. The various powers granted in this act to a constitu-  
9 ent unit shall be exercised by its governing body.

10 (5) ~~-(4)-~~ If a constituent unit, other than a county, oper-  
11 ating under this act elects to raise money to pay all or a por-  
12 tion of its share of the cost of a project by assessing the costs  
13 upon benefited lands, its governing body shall so determine by  
14 resolution and fix the district therefor. The governing body  
15 shall then cause a special assessment roll to be prepared. ~~and~~  
16 ~~thereafter the proceedings in respect to~~ THE PROCEDURES  
17 REGARDING the special assessment roll and the making and collec-  
18 tion of the special assessments on the roll ~~—~~ shall be in  
19 accordance with the provisions of the statute or charter govern-  
20 ing special assessments in the constituent unit, except that the  
21 total assessment may be divided into any number of installments  
22 not exceeding 30, and any person assessed shall have the right at  
23 the hearing upon the special assessment roll to object to the  
24 special assessment district previously established.

25 Sec. 16. Revenue bonds issued pursuant to this act ~~shall~~  
26 MAY be secured by a trust agreement by and between the authority  
27 and a corporate trustee, which may be any trust company or bank

1 having the powers of a trust company, within or without the  
2 state. The trust agreement may pledge or assign the rentals and  
3 other revenues of the authority. ~~, but shall not convey or~~  
4 ~~mortgage part or all of a project.~~ The trust agreement shall  
5 contain provisions for protecting and enforcing the rights and  
6 remedies of the bondholders as may be reasonable and proper and  
7 not in violation of law, including covenants setting forth the  
8 duties of the authority in relation to the acquisition or con-  
9 struction of a project and the extension, enlargement, improve-  
10 ment, maintenance, operation, repair, and insurance of a project  
11 and the custody, safeguarding, and application of all money and  
12 may contain provisions for the employment of consulting engineers  
13 in connection with the construction and operation of a project.  
14 The trust agreement shall set forth the rights and remedies of  
15 the bondholders and of the trustee, ~~and~~ may restrict the indi-  
16 vidual right of action by the bondholders, and may contain any  
17 other provisions the authority may consider reasonable and proper  
18 for the security of the bondholders.

19 Sec. 23. ~~(1)~~ An authority ~~created on or after May 1,~~  
20 ~~1984~~ shall within 2 years after its creation prepare or cause to  
21 be prepared a plan for the future development, construction, and  
22 improvement of the port and its facilities, including the maps,  
23 profiles, and other data and descriptions necessary to set forth  
24 the location and character of the work to be undertaken by the  
25 authority. ~~An authority in existence before May 1, 1984 shall~~  
26 ~~prepare or cause to be prepared the plan provided for in this~~  
27 ~~subsection not later than September 30, 1985. The authority~~

1 ~~shall notify the legislature on April 15, 1985, as to the~~  
2 ~~progress of the plan.~~ The authority shall cause notice by publi-  
3 cation to be given upon the completion of the plan in a daily  
4 newspaper of general circulation in the area under the jurisdic-  
5 tion of the authority. The notice shall ~~fix~~ SET the time and  
6 place for A hearing on the plan, which shall be not less than 30  
7 ~~nor~~ OR more than 60 days after publication of the notice. Any  
8 interested person may file written comments to the plan, if those  
9 comments are filed with the secretary-treasurer of the authority  
10 not less than 5 days before the date ~~fixed~~ SET for the  
11 hearing. After the hearing, the authority may adopt the plan,  
12 with any modifications or amendments, as the official plan of the  
13 authority. The authority, after adoption of the plan, may  
14 modify, amend, or extend the plan after notice and hearing in the  
15 manner prescribed in this subsection.

16 ~~(2) The plan and any modification, amendment, or extension,~~  
17 ~~when adopted by the authority after notice and hearing, shall be~~  
18 ~~conclusive except that plans for specific projects, to be under-~~  
19 ~~taken in execution of the official plan, shall not be adopted by~~  
20 ~~the authority without prior individual approval by the governing~~  
21 ~~bodies of its constituent units, the state transportation depart-~~  
22 ~~ment, and the department of commerce.~~

23 Sec. 24. (1) The authority shall submit in writing a  
24 detailed estimate of the budget required for the business and  
25 conduct of an authority's affairs, initially ~~—~~ for a 2-year  
26 period ~~—~~ and annually thereafter, to the governing bodies of  
27 its constituent units. ~~—, the department of commerce, and the~~

1 ~~department of state highways and transportation for approval.~~

2 The state shall provide 50% of the operating budget of the  
3 authority, to be included in the ~~department of state highways~~  
4 ~~and~~ transportation DEPARTMENT budget which shall be subject to  
5 legislative approval. Fifty percent of the operating budget of  
6 an authority in which not more than 1 county and not more than 1  
7 city participate shall be funded equally by the participating  
8 county and city.

9 (2) A city or county creating or participating in an author-  
10 ity may appropriate for the use of the authority, and include in  
11 its levy for general fund purposes, an amount considered proper.  
12 However, the total amount permitted by law to be levied by a city  
13 or county for general fund purposes shall not be considered  
14 increased by this section.

15 (3) As used in this section, "operating budget" means solely  
16 operation and maintenance expenses of an authority not included  
17 in the cost of a specific project, THE COST OF DEVELOPING A SPE-  
18 CIFIC PROJECT, and interest on notes, but excludes amounts for  
19 debt service on bonds and amounts for acquisition, construction,  
20 enlargement, improvement, or extension of port facilities.

21 (4) PROJECT COSTS OF A SPECIFIC PROJECT, INCLUDING DEVELOP-  
22 MENT COSTS OR COSTS OF AN UNDERTAKING OF AN AUTHORITY, SHALL BE  
23 PAYABLE FROM ANY LEGALLY AVAILABLE SOURCE.

24 Enacting section 1. Section 15 of the  
25 Hertel-Law-T. Stopczynski port authority act, 1978 PA 639,  
26 MCL 120.115, is repealed.